

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-1305-WQ-E **TCEQ ID:** RN105282172 **CASE NO.:** 34439
RESPONDENT NAME: Custom Crushed Stone, Inc.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Custom Crushed Stone Kyle Seale Parkway Site, on the east side of Kyle Seale Parkway, two miles north of the intersection of Kyle Seale Parkway and Loop 1604 Northwest, San Antonio, Bexar County</p> <p>TYPE OF OPERATION: Rock crushing quarry</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 22, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Shontay Wilcher, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-2136, Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Lloyd W. Tausch, Treasurer, Custom Crushed Stone, Inc., 8845 Leslie Road, San Antonio, Texas 78254 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 26, 2007</p> <p>Date of NOV/NOE Relating to this Case: July 27, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation. One violation was documented.</p> <p>WATER</p> <p>Failure to obtain authorization to discharge storm water associated with an industrial activity [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].</p>	<p>Total Assessed: \$1,500</p> <p>Total Deferred: \$300 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,200</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent submitted a completed industrial notice of intent and a storm water pollution prevention plan on May 30, 2007.</p>

Additional ID No(s): 0



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ

DATES

Assigned
PCW30-Jul-2007
15-Aug-2007

Screening

3-Aug-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Custom Crushed Stone, Inc.

Reg. Ent. Ref. No. RN105282172

Facility/Site Region 13-San Antonio

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 34439

Docket No. 2007-1305-WQ-E

Media Program(s) Water Quality

Multi-Media

No. of Violations 1

Order Type 1660

Enf. Coordinator Shontay Wilcher

EC's Team Enforcement Team 6

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$2,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

0% Enhancement

Subtotals 2, 3, & 7

\$0

Notes

No adjustment for compliance history.

Culpability

No

0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

25% Reduction

Subtotal 5

\$500

Before NOV

NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent came into compliance on May 30, 2007.

0% Enhancement*

Subtotal 6

\$0

Total EB Amounts \$9
Approx. Cost of Compliance \$2,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal

\$1,500

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment

\$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

\$1,500

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$1,500

DEFERRAL

20%

Reduction

Adjustment

-\$300

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$1,200

Screening Date 3-Aug-2007

Docket No. 2007-1305-WQ-E

PCW

Respondent Custom Crushed Stone, Inc.

Policy Revision 2 (September 2002)

Case ID No. 34439

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105282172

Media [Statute] Water Quality

Enf. Coordinator Shontay Wilcher

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 3-Aug-2007		Docket No. 2007-1305-WQ-E		PCW
Respondent Custom Crushed Stone, Inc.		<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 34439		<small>PCW Revision June 26, 2007</small>		
Reg. Ent. Reference No. RN105282172				
Media [Statute] Water Quality				
Enf. Coordinator Shontay Wilcher				
Violation Number	<input type="text" value="1"/>			
Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)			
Violation Description	Failed to obtain authorization to discharge storm water associated with an industrial activity, as documented during an investigation conducted on April 26, 2007.			
Base Penalty				<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	
					Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.				
Adjustment					<input type="text" value="\$9,000"/>

Violation Events

Number of Violation Events	<input type="text" value="2"/>	<input type="text" value="34"/>	Number of violation days
<small>mark only one with an x</small>	<div style="display: flex; flex-direction: column;"> <div>daily <input type="text"/></div> <div>monthly <input type="text" value="x"/></div> <div>quarterly <input type="text"/></div> <div>semiannual <input type="text"/></div> <div>annual <input type="text"/></div> <div>single event <input type="text"/></div> </div>	Violation Base Penalty <input type="text" value="\$2,000"/>	
<div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> Two monthly events are recommended based on documentation of the violation during the April 26, 2007 investigation date to the May 30, 2007 compliance date. </div>			

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$9"/>	Violation Final Penalty Total <input type="text" value="\$1,500"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,500"/>	

Economic Benefit Worksheet**Respondent** Custom Crushed Stone, Inc.**Case ID No.** 34439**Reg. Ent. Reference No.** RN105282172**Media** Water Quality**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$2,000	26-Apr-2007	30-May-2007	0.1	\$9	n/a	\$9

Notes for DELAYED costs

The estimated cost of preparing a storm water pollution prevention plan and to obtain a permit. The Date Required is the date of the investigation and the Final Date is the date of compliance.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$9

Compliance History

Customer/Respondent/Owner-Operator:	CN601597735	Custom Crushed Stone, Inc.	Classification: AVERAGE	Rating: 1.88
Regulated Entity:	RN105282172	CUSTOM CRUSHED STONE KYLE SEALE PKWY SITE	Classification:	Site Rating:
ID Number(s):				
Location:	E SIDE OF KYLE SEALE PKWY 2 ML N OF LOOP 1604			
TCEQ Region:	REGION 13 - SAN ANTONIO			
Date Compliance History Prepared:	August 20, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 20, 2002 to August 20, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Shontay Wilcher		Phone:	(512) 239-2136

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	Yes
2. Has there been a (known) change in ownership of the site during the compliance period?	No
3. If Yes, who is the current owner?	N/A
4. If Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership occur?	N/A

Components (Multimedia) for the Site :

A.	Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
	N/A
B.	Any criminal convictions of the state of Texas and the federal government.
	N/A
C.	Chronic excessive emissions events.
	N/A
D.	The approval dates of investigations. (CCEDS Inv. Track. No.)
	1 07/27/2007 (559793)
E.	Written notices of violations (NOV). (CCEDS Inv. Track. No.)
F.	Environmental audits.
	N/A
G.	Type of environmental management systems (EMSs).
	N/A
H.	Voluntary on-site compliance assessment dates.
	N/A
I.	Participation in a voluntary pollution reduction program.
	N/A
J.	Early compliance.
	N/A
Sites Outside of Texas	
	N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CUSTOM CRUSHED STONE, INC.
RN105282172**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1305-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Custom Crushed Stone, Inc. ("CCSI") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and CCSI appear before the Commission and together stipulate that:

1. CCSI owns and operates a rock crushing quarry on the east side of Kyle Seale Parkway, two miles north of the intersection of Kyle Seale Parkway and Loop 1604 Northwest in San Antonio, Bexar County, Texas (the "Site").
2. CCSI has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and CCSI agree that the Commission has jurisdiction to enter this Agreed Order, and that CCSI is subject to the Commission's jurisdiction.
4. CCSI received notice of the violations alleged in Section II ("Allegations") on or about August 1, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by CCSI of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Five Hundred Dollars (\$1,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

CCSI has paid One Thousand Two Hundred Dollars (\$1,200) of the administrative penalty and Three Hundred Dollars (\$300) is deferred contingent upon CCSI's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If CCSI fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require CCSI to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and CCSI have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that CCSI submitted a completed industrial notice of intent and a storm water pollution prevention plan on May 30, 2007.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that CCSI has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, CCSI is alleged to have failed to obtain authorization to discharge storm water associated with an industrial activity, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on April 26, 2007.

III. DENIALS

CCSI generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that CCSI pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and CCSI's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Custom Crushed Stone, Inc., Docket No. 2007-1305-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon CCSI. CCSI is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against CCSI in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to CCSI, or three days after the date on which the Commission mails notice of the Order to CCSI, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

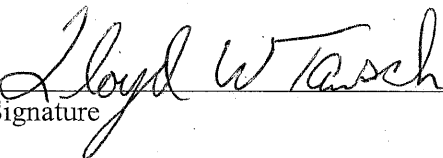
1/11/88
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

10-25-07
Date

LLOYD W TAUSCH
Name (Printed or typed)
Authorized Representative of
Custom Crushed Stone, Inc.

Tres
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

